

DOCUMENT RESUME

ED 100 985

TM 004 105

AUTHOR Witherspoon, A. D.; And Others
TITLE The Law Encounter Severity Scale (LESS): A Criterion for Criminal Behavior and Recidivism.
INSTITUTION Rehabilitation Research Foundation, Montgomery, Ala.
SPONS AGENCY Manpower Administration (DOL), Washington, D.C.
REPORT NO RRF-908-8-31-73
PUB DATE Aug 73
NOTE 16p.; For a related document, see TM 004 106

EDRS PRICE MF-\$0.75 HC-\$1.50 PLUS POSTAGE
DESCRIPTORS Adults; *Behavior Rating Scales; Criminals; Evaluation Criteria; *Longitudinal Studies; *Recidivism; Social Adjustment; *Socially Deviant Behavior

IDENTIFIERS Environmental Deprivation Scale; *Law Encounter Severity Scale; Maladaptive Behavior Record

ABSTRACT

Followup studies of released offenders in the community have frequently provided poor indices of recidivism because of their failure to discriminate between different kinds of violations and adjustment to the community. To develop a new criterion for measuring recidivism, information on the postrelease behavior of 142 adult male felons was gathered over an 18.5 month period after their release. The new criterion the Law Encounter Severity Scale (LESS), consisted of 38 categories, ranking in a continuum of severity from no violations to conviction of a felony. The scale was then grouped into five basic clusters of violations. Comparisons between the LESS and the Environmental Deprivation Scale (EDS) and the Maladaptive Behavior Record (MBR) showed the LESS to be an effective criterion for assessing individual law violations. A copy of the LESS with sample distributions is included in the appendix. (SM)

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**THE LAW ENCOUNTER SEVERITY SCALE (LESS):
A CRITERION FOR CRIMINAL BEHAVIOR AND RECIDIVISM**

by

A. D. Witherspoon, E. K. deValera, and W. O. Jenkins

**U.S. DEPARTMENT OF HEALTH,
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**Experimental Manpower Laboratory for Corrections
Rehabilitation Research Foundation
P. O. Box 3587
Montgomery, Alabama 36109**

August 1973

RRF-908-8-31-73

TM 004 105

This report on the EMLC was prepared under contract No. 82-01-69-06 with Manpower Administration, U.S. Department of Labor. Organizations undertaking such projects under Federal Government sponsorship are encouraged to express their own judgement freely. Therefore, points of view or opinions stated in this document do not necessarily represent the official position or policy of the Department of Labor or other Federal agencies mentioned herein.

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Introduction

A major component of the correctional research conducted by the Experimental Manpower Laboratory for Corrections (EMLC) has been the longitudinal follow-up studies of the released offender in the community. These studies were designed to provide information about postrelease behavior patterns of the ex-offender and to assess the effects of institutional treatment, using a battery of behavioral assessment instruments. The instruments included the Environmental Deprivation Scale (EDS), which measures the input the ex-offender receives from his environment; the Maladaptive Behavior Record (MBR), which complements the EDS by assessing the subject's response output (adaptive or maladaptive); and the Weekly Activity Record (WAR), which examines the ex-offender's use of his time on a weekly basis. The studies found that high scores on the EDS and MBR, as well as a particular pattern of time usage on the WAR, indicated poor postrelease adjustment and were highly predictive of law violations. To validate these instruments, the EMLC had to first precisely define the criterion being used to determine maladaptive adjustment: the ex-offender's postrelease law-violating behavior in relation to the criminal justice system, which includes any law enforcement agency. This paper presents an analysis of that criterion.

Problems in Specifying the Criterion

The EMLC's concern for establishing a basis for discriminating criminal behavior and recidivism is not unique: all agencies and programs dealing with the offender use guidelines to evaluate his postrelease criminal and law-violating record. Many of these guidelines, however, fall short of adequately specifying the criterion. For example, some research projects and institutional treatment programs use "recidivism," or return to prison, as their standard of postrelease failure. The result is a dichotomous classification, recidivist or non-recidivist, which gives no indication of the extent of the ex-offender's maladaptation or adaptation. How serious was the crime the recidivist committed? Is the non-recidivist well adjusted to the community? Has he had no law encounters? Or, while he has not committed a felony, has he been jailed for multiple misdemeanors?

The oversimplified grouping which results from an "either-or" dichotomy has been noted by Glaser (1964), Conrad (1965), and Glaser, Carter, and Wilkins (1972), while Laulicht (1962) and Jenkins, Barton, deValera, DeVine, Witherspoon, Muller, and McKee (1973) have stressed the point that a continuum of success and failure is more meaningful.

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A similar conclusion was reached by Abt Associates in the national MDT evaluation (1971), who stated in their report, "...Since the reasons for a return [to prison] differ, we need to keep these separate in our data collection."

The major problem with a dichotomous classification is that it does not provide specific information to evaluate postrelease adjustment in the criminal behavior area, and specific information is needed to evaluate and revise institutional and community treatment programs. Another concern is the failure of this classification to show any relationship to cost in the criminal justice system, since all recidivists are grouped together. The cost of incarcerating a man who receives a life sentence for murder is obviously much greater than that for the year-and-a-day sentence a car thief receives.

Scales have been developed which treat criminal behavior and recidivism as a continuum, but most of these are of limited use in establishing a criterion because they do not generalize beyond the situation for which they were developed. Some, like the California Severity of Offense Scale (Warren & Palmer, 1966) and the Index of Delinquency (Sellin & Wolfgang, 1964), are intended for use only with a specific target population. The ten-point California Severity of Offense Scale was developed by the Youth Authority of the Department of Corrections of the State of California specifically for use with youthful offenders, thus limiting its applicability with adult offenders. Secondly, it is based on California state laws, which would have to be interpreted for use in other states. The Index of Delinquency, while also designed for juvenile populations, has a further limitation: it requires extensive efforts to determine the severity ratings, for these are based on the cost of a specific crime or the seriousness of the harm done to the individuals, e.g., in an assault and battery case. This scale also omitted narcotic offenses and escape from prison. Another scale, the Recidivism Outcome Index (Moberg & Ericson, 1972), was designed for use with parolees and is limited to this population by a number of items which deal with parole violation.

Other scales and classification schemes which have been developed are not useful in defining a criterion because the terminology used is too ambiguous for objective classification. The Gluecks (1930), for example, recommended a three-point scale of recidivism: success, partial failure, and failure. Their explanation of the groups, however, used such phrases as "occasional technical automobile violation," terminology which lends itself to personal interpretation and results in inconsistent classification. An associated problem appears in their explanation of the partial failure group. There the term "occasional

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minor offenses for which the violator of the law was neither arrested nor prosecuted" results in a classification dependent upon rumor, since no official record of such offenses exist. The same weakness is also apparent in the Recidivism Outcome Index, for several of its items contain such phrases as "felony *admitted*, confessed, or agent *alleged*, but no prosecution or no conviction for the offense [*italics added*]." For purposes of objective classification, the use of ambiguous terms and items based on information which cannot be verified should be avoided.

Still another problem results when the units used for classification are too large. Mandel's (1965) eight-category recidivism typology, for instance, groups all felony convictions together. In effect, then, a man who receives a life sentence for a multiple murder is grouped with the man who receives a sentence of a year and a day for grand larceny. In terms of the cost to the criminal justice system of incarcerating the two men, however, there is little comparison. This cost is an important consideration in establishing a criterion for criminal behavior and recidivism, for it is a rough index of the injury done to society as reflected in length of sentence.

A criterion which provides a basis for discriminating criminal behavior and recidivism must meet certain requirements to avoid the limitations of the scales and classification schemes previously discussed. *First*, it should present criminal behavior and recidivism as a continuum rather than a dichotomy. *Second*, it should generalize to all situations involving offenders, whether they are adults, juveniles, parolees, or some other group. *Third*, it should cover all offenses which can be verified by official records. *Fourth*, it should group only those offenses which are comparable in terms of cost to the criminal justice system, as determined by length of sentence. *Finally*, the terminology used to distinguish offenses and groupings should be as objective as possible.

The Development of the Criterion: The LESS

Data from two longitudinal follow-up studies (Jenkins et al., 1973) of the released offender in the community provided the basis for the EMLC's development of the criterion, the Law Encounter Severity Scale (LESS). In the course of the 1969 follow-up investigation, a three-point criterion evolved, consisting of no law violations, minor law violations (misdemeanors), and major law violations (felonies). The conclusion was drawn that a more refined scale was needed. In the 1971 follow-up study, information had been systematically collected on the postrelease behavior of 142 adult male felons, as measured

by such factors as employment, interpersonal relationships, leisure-time activities, and law encounters. The follow-up period for each subject ranged from 11 to 26 months, with a mean of 18.5 months. The EMLC then sorted these data to arrive at an objective method of classification which would accommodate the law encounter status of each subject at the termination of the study.

It quickly became obvious, however, that in order to accurately account for each subject, items would have to be developed which represented his status or situation at that time. Some subjects' situations could be described by what may be called "process" items, some by "unstable" items, and some by "stable" items. The process group consisted of those subjects who were being processed through the justice system, e.g., in jail awaiting trial, out on bond awaiting trial, or awaiting a parole hearing. Any study, especially if it uses a cut-off point or termination date, will generally have subjects who fall within the process group. These subjects cannot be ignored although they may, with the help of effective lawyers, remain in this group for several years. The unstable group was composed of those who were "wanted" or "on the run," and were, therefore, apt to enter one of the other groups when apprehended. These subjects had either absconded while on parole or had a fugitive warrant which was active, such as fugitive on bond. The stabilized group consisted of those subjects who had gone through the initial process of the justice system and were convicted, acquitted, discharged, etc.

The scale which emerged from this data analysis, the LESS, represents each of these groups as well as those subjects who had no law encounters. It consists of 38 categories, or items, which form a law encounter continuum. To arrive at a ranking of the items, three judges independently ordered the law encounter data and agreed in 90-95% of the cases. The items are ranked in order of severity, even those which did not involve a sentence or fine. For example, Item 5, "arrested (charged) with misdemeanor(s); charges dropped; released," is ranked as being less severe than Item 6, "arrested (charged) with felony(s); charges dropped; released." The five major groups of items emerged almost automatically, and there was complete agreement across the judges on them.

The LESS is thus a comprehensive scale for all types of law encounters and, as such, applies equally well to adults, juveniles, parolees, and other groups. Additionally, the ranking of items by severity provides a rough index to the cost to the criminal justice system.

In developing the LESS, the EMLC found that the *method of data collection* was a critical factor in determining the subject's position on the scale. If, for example, data

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were obtained only through personal interviews with the subjects, these subjects must be located. This is a difficult process in itself, since those subjects who are involved in criminal activities are generally using aliases and making themselves unavailable. And, once the subject has been contacted, it is often difficult to verify the information he has volunteered, even by checking with state and federal arrest records.

Or, if a researcher decided to use only official records and not to rely upon verbal reports, he would find that information from sheriffs' departments, city police, FBI records, parole officers, and state identification departments is often incomplete. In the EMLC follow-up studies, it was found that many communities, especially the smaller towns and counties, do not send their arrest information to the FBI or even to their state department of investigation and identification, although the latter may be required by a state statute. Those who do send in arrest information often submit incomplete reports, listing only the subject's charge at the time of his arrest. This charge may have been changed when he went to court (dropped and recharged), especially if more evidence had been found or if he agreed to plead guilty to a lesser charge. The incompleteness and limitations of official records have also been noted by the Gluecks (1930) and Glaser, Carter, and Wilkins (1972).

The EMLC's method of data collection used behavioral interviews (Witherspoon, deValera, Jenkins, & Sanford, 1973) with each subject to assess his law encounters and a variety of additional behaviors. Other resources (family, parole officers, etc.) were also used to discover *leads* concerning law encounters. Official records were then checked. The EMLC found that the most important means of *verifying* these verbal reports, however, was by reading the court's decision as recorded in the court records kept by the court recorder. The court records are generally kept in large log books and filed by various bookkeeping systems. Because they are public records, they are readily available to the researcher. These court records often contain information which is not found in any other official records and, whenever possible, should be used to verify court dispositions.

The LESS is designed to be used to rank law encounters which have been verified by checking official court and arrest records. None of the items includes such phrases as "suspicion" or "alleged offense," thus avoiding the problems of ambiguous terminology associated with some scales discussed earlier.

At the least severe end of the scale, however, are three items for which no official records exist. Item 1 is "no law encounters," while Items 2 and 3 deal with very minor

law encounters: pick-ups, questioning, or searches for which there were no charges and after which the subject was released. The information for these items was obtained in interviews with the subject; official court and arrest records were then checked to verify that the subject had had no more severe law encounter.

Applications and Implications of the LESS

The LESS was developed to clarify the specific criterion of law-violating behavior, focusing on legal and judicial status and outcome. To determine the usefulness of the scale as a criterion and the implications of its use, the EMLC applied the LESS to the 1971 postrelease follow-up data from which it had been developed.

Application of the LESS to EMLC Follow-Up Data

In this analysis of the follow-up data, each of the 142 subjects was positioned on the LESS at the item which represented *his most severe law encounter*, as verified by official records, during the follow-up period. This final status includes items in the process category, e.g., awaiting trial or awaiting a hearing. In the case of one subject who was appealing the court's decision to a higher court, he was classified according to the lower court's decision, since this decision had not been reversed or changed by a new hearing or trial. The necessity of this is evident when one considers that a number of cases are appealed over and over, a process which may extend over several years.

The copy of the LESS in the appendix of this paper shows the number of subjects positioned at each item on the scale. Summarizing this information, four items accounted for the majority of the subjects. These were: Item 4 (traffic violations); Item 16 (convicted of misdemeanor; sentenced to 30 days or less or a comparable fine); Item 29 (parole violation); and Item 35 (convicted for felony[s]; sentenced to more than one but less than five years).

When the items were separated into the five basic groups, the 142 subjects in the study were distributed as shown in Table 1. Almost half (45%) had not had a law encounter more serious than a pick-up, search, or traffic violation. The category "other," which accounts for 4% of the subjects, includes those who had moved out of the study area after less than three months in the follow-up study (about 3%) and one subject who died of natural causes.

TABLE 1

Distribution of 142 Ss Based Upon Their Most Severe
Law Encounter According to the Five LESS Groups

LESS Group and Content of Group	Percent of Ss
<i>Group 1:</i> No law encounters.	30
<i>Group 2:</i> Picked up and/or questioned or searched concerning misdemeanor(s) and/or felony(s). However, all charges were dropped.	15
<i>Group 3:</i> Awaiting trial for misdemeanor(s) or was tried in court for misdemeanor(s) or felony(s) but was not convicted; picked up for parole violation but parole reinstated (or awaiting hearing); wanted for misdemeanor(s); killed in commission of a misdemeanor; or convicted of misdemeanor and sentenced or fined.	13
<i>Group 4:</i> Wanted for felony(s); absconded from parole; awaiting trial for felony(s); parole violated and returned to prison; killed during the commission of a felony(s); or convicted for felony(s) and placed on probation or sentenced to less than one year in prison.	18
<i>Group 5:</i> Convicted for felony(s) and sentenced to prison for more than one year.	20
<i>Other</i>	4

Relationship of the LESS to the Follow-Up Instruments

One reason the LESS was needed was for validation of the predictive capacity of several behavioral assessment instruments used by the EMLC to measure postrelease adjustment. The two major instruments being validated were the Environmental Deprivation Scale (EDS) and the Maladaptive Behavior Record (MBR). High EDS scores indicate that the individual is experiencing a lack of environmental support, while high MBR scores indicate a lack of effective or functional responses to situations or problems in his everyday life.

Both instruments have repeatedly demonstrated that they are related to law violations (Jenkins et al., 1973) and thus become a major part of the overall criterion. For example, if a high EDS score (9 or above) is significantly related to severity of law encounter, it is evident that when an ex-offender's environmental situation has deteriorated (as indicated by an increase in his EDS score, such as from 7 to 11), he becomes a statistically

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high risk for successful postrelease adjustment. Figures 1 and 2 indicate how well the five basic LESS groups were related to the subjects' adaptation to the free world, as measured by EDS and MBR scores. In both figures the greatest percentage of subjects scoring below the grand median (indicating relatively successful adjustment) is found in LESS Groups I and II, meaning that their most severe law encounter was a pick-up search, or traffic violation.

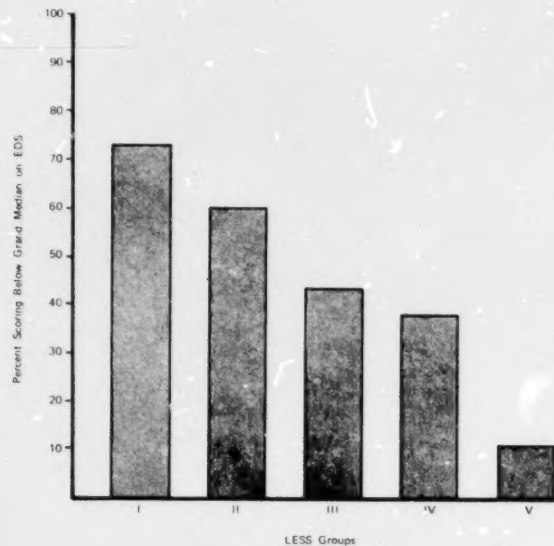


Fig. 1. Relationship between Environmental Deprivation Scale (EDS) scores and Law Encounter Severity Scale (LESS) groups.

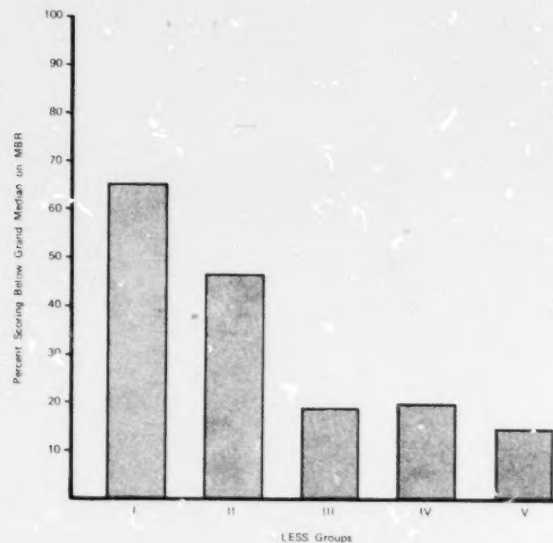


Fig. 2. Relationship between Maladaptive Behavior Record (MBR) scores and Law Encounter Severity Scale (LESS) groups.

The data in Figures 1 and 2 show that environmental input and behavioral output are integral parts of the criterion, and, as such, provide a basis for treatment. A third instrument, the Weekly Activity Record (WAR), is presently undergoing first-step validation, i.e., validation of the relationship of the ex-offender's use of his time to law encounters.

Flexibility and Limitations of the LESS

In the EMLC's analysis of the follow-up study data, the developers of the LESS agreed that in their arrangement of the 38 items into five groups the order of severity for the groups was stable. However, other researchers may prefer to alter the order of the individual items, depending upon the context of the experimental question. Therefore, even the EMLC researchers may not always use the LESS in the exact form in which it is presented in this paper. For example, the placement of process items such as "awaiting trial on bond" may be flexible. Such flexibility is not only advantageous but leads to greater applicability and generality of the scale.

The present format of the LESS, however, is quite acceptable as a basic criterion by which various studies may compare their research findings. It is especially useful as a means of objectively reporting law violation and recidivism data accumulated by various state programs which are not research oriented. In this sense, it can be used to measure, at least in part, degree of rehabilitation.

In conclusion, it should be noted that a criterion such as the LESS offers only information concerning a specific individual's law violations and encounters. It is not intended for use as a generalized diagnostic measure. Other instruments which can accurately predict adjustment or maladjustment while diagnosing the subject's basic problems, e.g., the EDS and the MBR, are necessary for effective treatment. Then, too, many behavioral deviancies do not involve law violation; for these a different kind of criterion must be developed.

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APPENDIX

LAW ENCOUNTER SEVERITY SCALE

Number of Ss
with this item
as their final
status
(Total N = 142)

Item

GROUP I

43 1. No law encounters.

GROUP II

1 2. Picked up and/or questioned or searched concerning a misdemeanor(s); not charged; released.

7 3. Picked up and/or questioned or searched concerning felony(s); not charged; released.

11 4. Traffic violation(s); fined and/or sentenced (not including DWI).

0 5. Arrested (charged) with misdemeanor(s); charges dropped; released.

3 6. Arrested (charged) with felony(s); charges dropped; released.

GROUP III

0 7. Tried in court for misdemeanor(s); no conviction; released.

1 8. Tried in court for felony(s); no conviction; released.

0 9. Picked up for technical parole violation; had hearing; parole reinstated.

0 10. Picked up for technical parole violation; awaiting hearing.

0 11. Misdemeanor warrant(s) issued; subject still not apprehended.

0 12. Fugitive; bond(s) forfeited; subject still not apprehended (misdemeanor).

0 13. Arrested for misdemeanor(s); awaiting trial.

0 14. Arrested for misdemeanor(s); awaiting trial and a parole hearing.

1 15. Killed during the commission of a misdemeanor.

11 16. Convicted of misdemeanor; sentenced to 30 days or less or comparable fine.

3 17. Convicted of misdemeanor; sentenced to 31 days or more but less than 90 days or comparable fine.

2 18. Convicted of misdemeanor; sentenced to 91 days or more but less than 180 days or comparable fine.

0 19. Convicted of misdemeanor; sentenced to 181 days or more or comparable fine.

GROUP IV

<u>0</u>	20. Felony warrant(s) issued; subject still not apprehended.
<u>0</u>	21. Fugitive; bond forfeited on felony charge(s).
<u>2</u>	22. Absconded from parole; parole warrant issued.
<u>0</u>	23. Absconded from parole; parole warrant issued; and misdemeanor warrant(s) issued.
<u>0</u>	24. Absconded from parole; parole warrant issued; and felony warrant(s) issued.
<u>0</u>	25. Absconded while on parole; charged and awaiting trial for misdemeanor(s).
<u>1</u>	26. Absconded while on parole, charged and awaiting trial for felony(s).
<u>6</u>	27. Arrested for felony(s); awaiting trial.
<u>0</u>	28. Arrested for felony(s); awaiting trial and parole hearing.
<u>9</u>	29. Picked up for technical parole violation; parole violated at hearing.
<u>2</u>	30. Parole violated at hearing; in prison awaiting trial for felony(s).
<u>4</u>	31. Parole violated for misdemeanor conviction; returned to prison.
<u>1</u>	32. Killed during the commission of felony.
<u>0</u>	33. Convicted for felony(s); placed on probation.
<u>0</u>	34. Convicted for felony(s); sentenced to less than one year.

GROUP V

<u>21</u>	35. Convicted for felony(s); sentenced to more than one but less than five years.
<u>4</u>	36. Convicted for felony(s); sentenced to more than five but less than ten years.
<u>4</u>	37. Convicted for felony(s); sentenced to more than ten but less than twenty years.
<u>0</u>	38. Convicted for felony(s); sentenced to twenty years or more.

Other Status Categories

<u>1</u>	<i>Dead</i> —Deceased (natural or accidental).
<u>4</u>	<i>OA</i> —Subject moved out of study area (spent less than total of three months in follow-up study).